

Exhibit 5

From: "Donald H. Heller" <dheller@donaldhellerlaw.com>
Date: March 11, 2020 at 8:33:18 PM EDT
To: "Beirne, Eoin" <EPBeirne@mintz.com>
Cc: "karin.bell@usdoj.gov" <karin.bell@usdoj.gov>, "Rosen, Eric (USAMA)" <Eric.Rosen@usdoj.gov>, "O'Connell, Justin (USAMA)" <Justin.O'Connell@usdoj.gov>, "Wright, Leslie (USAMA)" <Leslie.Wright@usdoj.gov>, "Kearney, Kristen (USAMA)" <Kristen.Kearney@usdoj.gov>, "Popeo, R. Robert" <RRPopeo@mintz.com>, "Robinson, Mark" <MERobinson@mintz.com>, "Flashner, Cory" <CSFlashner@mintz.com>, "McGee-Tubb, Mathilda" <MSMcGee-Tubb@mintz.com>, "Mulcahy, Peter" <PCMulcahy@mintz.com>
Subject: RE: Document Preservation Notice - US v. Sidoo, et al.

Eoin, First let me apologize for the delay in responding to your last email. I have been tied up in two other matters and I am [REDACTED] Redacted per Protective Order.

What you classify as "relevant materials", actually describe what is classic attorney-client protected communications and/or attorney work product. The Supreme Court in *Swidler & Berlin v. United States* 524 U.S. 399, 403 (1998), stated the long established rule: "The attorney client privilege is one of the oldest recognized privileges for confidential communications." [Citations omitted]. "The privilege is intended to encourage 'full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice.'" Ibid, citing, *Upjohn Co. v. United States* 449 U.S. 383, 389 [1998].

The specific document that is the subject of the defense attack is an October 2, 2018 note created by Mr. Singer on his Notes Application on his iPhone 7, telephone number [REDACTED] 8802. Unfortunately, the Note of October 2, 2018, and other notes did not have my name on it nor did they contain notation of Attorney Client Privileged. However, that specific Note and other Notes were emailed directly to me out of the Notes Application using his email [REDACTED]@gmail.com [REDACTED]@gmail.com. Unbeknownst to me these Notes were created on the Notes Application and not typed in the body of an email. All communications including every email account controlled by Mr. Singer and sent to me by Mr. Singer since September 21, 2018, are Attorney client protected communications. I have the emails containing all of these particular notes. There has not been a waiver of my attorney client privilege communications with Mr. Singer by the government's release of Notes in the government's recent discovery in these Varsity Blues/Admissions cases, rather an example of integrity by government lawyers. I am sure that the government has or will describe in appropriate pleadings/declarations how these Notes were released.

My knowledge of when a Taint Team was assigned began on October 4, 2019, when I was contacted by AUSA Christopher Looney who provided 8 Extracts of Notes taken from Mr. Singer's iPhone 7, telephone number [REDACTED] 8802 on eight separate dates and identified as: Singer 2019-01-03 Notes Extract.pdf; Singer 2019-02-15 Notes Extract.pdf; Singer 2019-02-28 Notes Extract.pdf; Singer 2019-03-11 Notes Extract.pdf; Singer 2018-10-05 Notes Extract.pdf; Singer 2018-10-23 Notes Extract.pdf; Singer 2018-11-01 Notes Extract.pdf; Singer 2018-11-29 Notes Extract.pdf. I was to review the same. Unfortunately, Since August 12, 2019, [REDACTED].

[REDACTED] Redacted per Protective Order [REDACTED]

[REDACTED] Any delay since October was do to [REDACTED]. The majority of the Notes released predated my engagement.

The event that triggered the feeding frenzy occurred by what I perceived to be the integrity, competence and professionalism of AUSA Amanda Strachan of the Taint Team with the assistance of AUSA Looney. In a telephone conversation with Ms. Strachan she related to me that the Notes reviewed did not have my name or were identified as attorney client communication. True. I pointed that out to her that it was privileged and her response was in substance was even assuming so, portions of what I understood to be the October 2, 2018, on its face appeared to be potential Brady or Giglio material and should be disclosed to the defense and whatever value this material possessed would be something to be determine by a court.

Of course defense lawyers pontificated as to the meaning of the October 2, 2018 Note in pleadings and press comments, including yours truly; however, in the last analysis, the government fulfilled its obligation with integrity. While the competing tension between the attorney client privilege and the government's Brady and its progeny, obligation raises interesting legal issues, the October 2, 2018, appears with additional Singer notes in eight separate iPhone images and extractions, and Ms. Strachan's concerns as to duty I perceived to require a limited waiver of privilege.

It's disappointing to me as a former prosecutor, that the government lawyers are vilified without justification, but that mirrors in many ways the discordant and disconcerting political world we live in, where lies and distortion have replaced factual averments. In the last analysis, Mr. Singer has pleaded guilty to multiple felonies, all involving greed and stupidity and the merging together, since it takes two to tango, of Mr. Singer, the enabling protagonist with wealthy individuals, to wit, parents who for vanity, arrogance and a basis to brag in some cases, had the conceit and arrogance to commit criminal offenses because they had the money to do so. The point that is missed in this diversionary attack, is that each of these parents were recorded on wiretaps with Mr. Singer and in subsequent consensual recordings which discussed dollar amounts, vehicles of deceit, to wit, in some case false profiles, falsified SATs and ACT tests and essentially, the res gestae of a quid pro quo, in addition to mail, wire fraud as well as in some cases, tax fraud.

There is no attorney client privilege waiver in this case. If you seek a Rule 17(b) subpoena ex parte, please alert the magistrate judge or the district of Mr. Singer's position. Regards, Don Heller

Donald H. Heller

Donald H. Heller, A Law Corporation

3638 American River Drive

Sacramento, CA 95864

(916) 974-3500

(916) 974-2077 (Direct)

(916) 520-3497 (Fax)

American Board of Trial Advocates (ABOTA), Sacramento Valley Chapter – 2017 Trial Lawyer of the Year

Member, Executive Committee, Criminal Law Section, California Lawyers Association

Website: www.donaldhellerlaw.com<<http://www.donaldhellerlaw.com/>>

Attorney/Client Privileged Communication

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From: Beirne, Eoin <EPBeirne@mintz.com>

Sent: Thursday, March 05, 2020 6:40 PM

To: Donald H.Heller <dheller@donaldhellerlaw.com>

Cc: karin.bell@usdoj.gov; Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>; O'Connell, Justin (USAMA)

<Justin.O'Connell@usdoj.gov>; Wright, Leslie (USAMA) <Leslie.Wright@usdoj.gov>; Kearney, Kristen

(USAMA) <Kristen.Kearney@usdoj.gov>; Popeo, R. Robert <RRPopeo@mintz.com>; Robinson, Mark

<MERobinson@mintz.com>; Flashner, Cory <CSFlashner@mintz.com>; McGee-Tubb, Mathilda <[\[Tubb@mintz.com\]\(mailto:Tubb@mintz.com\)>; Mulcahy, Peter <\[PCMulcahy@mintz.com\]\(mailto:PCMulcahy@mintz.com\)>](mailto:MSMcGee-</p></div><div data-bbox=)

Subject: RE: Document Preservation Notice - US v. Sidoo, et al.

Thanks, Don

I appreciate your confirming receipt of our letter and assume you agree to preserve all relevant materials. Please let me know if you don't

The government indicated to defense counsel on 2/26/20 that Mr. Singer had waived privilege over notes created on his iPhone. We would be grateful if you could confirm what the government represented and that Mr. Singer did in fact waive privilege with respect to those notes.

I look forward to speaking further, as I am sure we will.

Best,

Eoin

Eóin Beirne | Member
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center | Boston, MA 02111
Direct: +1.617.348.1707<<tel:+1.617.348.1707>> | Fax: +1.617.542.2241<<tel:+1.617.542.2241>>
E-mail: EPBeirne@mintz.com<<mailto:EPBeirne@mintz.com>>
Web: www.mintz.com<<http://www.mintz.com>>

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From: Donald H.Heller <dheller@donaldhellerlaw.com>
Sent: Thursday, March 5, 2020 9:31 PM
To: Beirne, Eoin <EPBeirne@mintz.com>
Cc: karin.bell@usdoj.gov; Rosen, Eric (USAMA) <Eric.Rosen@usdoj.gov>; O'Connell, Justin (USAMA) <Justin.O'Connell@usdoj.gov>; Wright, Leslie (USAMA) <Leslie.Wright@usdoj.gov>; Kearney, Kristen (USAMA) <Kristen.Kearney@usdoj.gov>; Popeo, R. Robert <RRPopeo@mintz.com>; Robinson, Mark <MERobinson@mintz.com>; Flashner, Cory <CSFlashner@mintz.com>; McGee-Tubb, Mathilda <MSMcGee-Tubb@mintz.com>; Mulcahy, Peter <PCMulcahy@mintz.com>
Subject: RE: Document Preservation Notice - US v. Sidoo, et al.

Dear Eoin, I am in receipt of your email which contained a letter regarding preserving documentation in connection with my representation of Rick Singer. In my 50 years as a lawyer I have never received such a document. So first of all, California Business and Professions Code section 6068 (e)(1) requires me to: “. . . Maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” I'm sure there is a New York equivalent to 6068 (e)(1), since I'm also a member of the New York bar. I noticed that you attended Brooklyn Law School and so did I, the school must have ended instruction on the very important subject of the attorney-client privilege. As I observed the conduct of defense lawyers in the admissions case, it reminded me of a rejoinder I learned in the New York County District Attorney's Office years ago from a now Senior District Judge in Manhattan. It was part of our early training for situations when you oppose a lawyer who moves to personal attack rather than focus on the evidence, because he has no defense. The retort goes something like this, “when you can't win on the law, you try the facts, and when you can't win on either, you try the prosecutor. My attorney/client privileged communications will remain secret at all peril to myself. What I do know is that no one from the government side, AUSAs or agents, ever threatened, intimidated or directed my client to lie in my presence. So I will see you in Court Pal. Donald H. Heller

Donald H. Heller
Donald H. Heller, A Law Corporation
3638 American River Drive
Sacramento, CA 95864
(916) 974-3500
(916) 974-2077 (Direct)
(916) 520-3497 (Fax)

American Board of Trial Advocates (ABOTA), Sacramento Valley Chapter – 2017 Trial Lawyer of the Year
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Website: www.donaldhellerlaw.com<<http://www.donaldhellerlaw.com>>

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From: Beirne, Eoin <EPBeirne@mintz.com<<mailto:EPBeirne@mintz.com>>>

Sent: Thursday, March 05, 2020 3:36 PM

To: Donald H.Heller <dheller@donaldhellerlaw.com<<mailto:dheller@donaldhellerlaw.com>>>

Cc: karin.bell@usdoj.gov<<mailto:karin.bell@usdoj.gov>>; Rosen, Eric (USAMA)

<Eric.Rosen@usdoj.gov<<mailto:Eric.Rosen@usdoj.gov>>>; O'Connell, Justin (USAMA)

<Justin.O'Connell@usdoj.gov>; Wright, Leslie (USAMA)

<Leslie.Wright@usdoj.gov<<mailto:Leslie.Wright@usdoj.gov>>>; Kearney, Kristen (USAMA)

<Kristen.Kearney@usdoj.gov<<mailto:Kristen.Kearney@usdoj.gov>>>; Popeo, R. Robert

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<CSFlashner@mintz.com<<mailto:CSFlashner@mintz.com>>>; McGee-Tubb, Mathilda <[MSMcGee-](mailto:MSMcGee-Tubb@mintz.com)

Tubb@mintz.com<[mailto:MSMcGee-Tubb@mintz.com](mailto:Tubb@mintz.com)>>; Mulcahy, Peter

<PCMulcahy@mintz.com<<mailto:PCMulcahy@mintz.com>>>

Subject: RE: Document Preservation Notice - US v. Sidoo, et al.

Please find attached a revised letter with the correct dates of meetings we understand you attended or participated in.

Thanks and best,

Eoin

Eóin Beirne | Member

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center | Boston, MA 02111

Direct: +1.617.348.1707<<tel:+1.617.348.1707>> | Fax: +1.617.542.2241<<tel:+1.617.542.2241>>

E-mail: EPBeirne@mintz.com<<mailto:EPBeirne@mintz.com>>

Web: www.mintz.com<<http://www.mintz.com>>

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From: Beirne, Eoin <EPBeirne@mintz.com<<mailto:EPBeirne@mintz.com>>>

Sent: Thursday, March 5, 2020 5:41 PM

To: dheller@donaldhellerlaw.com<<mailto:dheller@donaldhellerlaw.com>>

Cc: karin.bell@usdoj.gov<<mailto:karin.bell@usdoj.gov>>; Rosen, Eric (USAMA)

<Eric.Rosen@usdoj.gov<<mailto:Eric.Rosen@usdoj.gov>>>; O'Connell, Justin (USAMA)

<Justin.O'Connell@usdoj.gov>; Wright, Leslie (USAMA)

<Leslie.Wright@usdoj.gov<<mailto:Leslie.Wright@usdoj.gov>>>; Kearney, Kristen (USAMA)

<Kristen.Kearney@usdoj.gov<<mailto:Kristen.Kearney@usdoj.gov>>>; Popeo, R. Robert

<RRPopeo@mintz.com<<mailto:RRPopeo@mintz.com>>>; Robinson, Mark

<MERobinson@mintz.com<<mailto:MERobinson@mintz.com>>>; Flashner, Cory

<CSFlashner@mintz.com<<mailto:CSFlashner@mintz.com>>>; McGee-Tubb, Mathilda <[MSMcGee-](mailto:MSMcGee-Tubb@mintz.com)

Tubb@mintz.com<[mailto:MSMcGee-Tubb@mintz.com](mailto:Tubb@mintz.com)>>; Mulcahy, Peter

<PCMulcahy@mintz.com<<mailto:PCMulcahy@mintz.com>>>

Subject: Document Preservation Notice - US v. Sidoo, et al.

Dear Mr. Heller,

Attached is a letter regarding document preservation in connection with your representation of Rick Singer.

Please contact me if you have any concerns.

Best,

Eoin

Eóin Beirne | Member

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

One Financial Center | Boston, MA 02111

Direct: +1.617.348.1707<<tel:+1.617.348.1707>> | Fax: +1.617.542.2241<<tel:+1.617.542.2241>>

E-mail: EPBeirne@mintz.com<<mailto:EPBeirne@mintz.com>>

Web: www.mintz.com<<http://www.mintz.com>>

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